

ORIGINAL
FILE

LAW OFFICES
KOTEEN & NAFTALIN
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036

BERNARD KOTEEN
ALAN Y. NAFTALIN
RAINER K. KRAUS
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
HERBERT D. MILLER, JR.
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN

M. ANNE SWANSON
GREGORY C. STAPLE
OF COUNSEL

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915
CABLE ADDRESS
"KOBURT"

RECEIVED

JUN - 8 1992

June 8, 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna Searcy
Secretary of Federal
Communications Commission
1919 M Street, N.W.
Washington, D.C. 20054

RE: Redevelopment of Spectrum for Emerging Technologies
ET Docket No. 92-9

Dear Ms. Searcy:

Transmitted herewith on behalf of Telephone and Data Systems, Inc., are an original and 9 copies of its comments in the above captioned proceeding.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,


George Y. Wheeler

No. of Copies rec'd
List A B C D E

C + 9

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

JUN - 8 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

ET Docket No. 92-9

TO: The Commission

COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc. on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys, submits the following comments in response to the Commission's Notice of Proposed Rulemaking herein regarding the reallocation of spectrum for the use of new telecommunication technologies.

As a provider of telephone, cellular and paging services, TDS is vitally interested in improving and expanding the service options which it can offer to its customers through the use of spectrum efficient and cost effective innovative new technologies. TDS has actively promoted the rapid and widespread deployment of PCS and other emerging technologies in the Commission's PCS and other proceedings and has commented extensively on the public need for the deployment of such technologies, allocation options, licensing and application procedures. It is currently conducting a program of experimentation to develop and implement

a new Personal Communication Service ("PCS") in three frequency bands including the 1850-1990 MHz band subject to reallocation in these proceedings and has a pioneer preference request pending with respect to this new innovative service¹.

TDS strongly supports the reallocation of frequencies in the 1850-1990, 2110-2150 and 2160-2200 MHz bands as an essential first step toward the early implementation of PCS services. At the same time, we share the concerns already expressed by a number of private microwave licensees that the proposed reallocation be accomplished so as not to disrupt existing services and the years of planning and expense which have gone into the development of the private microwave and common carrier networks already occupying these bands. TDS, through its subsidiaries, holds in excess of three hundred 2 GHz common carrier point-to-point microwave authorizations, which are potentially subject to displacement under the Commission's current proposals. As a common carrier, TDS is fully committed to provide services to the public without impairment or interruption.

We recommend the adoption of the policies outlined here in order to achieve the rapid implementation of PCS and other emerging technologies and at the same time to avoid unreasonable

¹. A subsidiary of TDS, American Portable Telecommunications, Inc., holds authorizations for PCS Experimental programs, (Call Signs KK2XAV, KK2XAZ, KK2XAY, KK2XAX, and KK2XAW), granted December 21, 1991.

or costly disruption to existing and planned 2 GHz microwave networks.

1. The Commission Should Re-Allocate the 1850-1990, 2110-2150 and 2160-2200 MHz Bands for Emerging Technologies Use.

TDS strongly supports the Commission's initiatives to make available additional spectrum for emerging technologies, particularly PCS. The Commission should proceed as rapidly as possible to provide adequate spectrum for the family of PCS services. With the Commission expected in coming months to issue a Notice of Proposed Rulemaking to allocate spectrum for PCS services, there is no need here to limit as a matter of policy the amount of spectrum initially to be available for PCS use. We support an initial allocation of 140 MHz for PCS use encompassing the entire 1850-1990 MHz band and encourage the Commission to allocate additional spectrum for PCS use, in the frequency bands which are compatible with developing international mobile communication allocations.

2. The Rights of Existing 2 GHz Microwave Users Should Continue on a Co-Primary Basis Until Voluntarily Relinquished.

As a licensee of more than three hundred common carrier 2 GHz point-to-point microwave stations operating in the bands proposed to be reallocated, TDS supports the continued provision of its common carrier services over these facilities. The Commission is correct in attempting to minimize impairment or disruption to the operations of existing 2 GHz microwave licensees. We support a transition plan which permits existing 2 GHz microwave licensees to continue their operations on a co-primary basis until they voluntarily agree to relinquish their rights to use these frequencies. The proposal to terminate the co-primary rights of existing user after a fixed period such as ten or fifteen years should be rejected.

The Commission has already proposed to permit Public Safety licensees to retain use of their 2 GHz microwave frequencies on a co-primary basis until voluntarily relinquished. Various other groups of private microwave licensees have also made well publicized efforts to obtain similar rights. The Commission should grant Public Safety, other private microwave and common carrier licensees the same rights in this regard.

3. The Commission Should Develop Interference Standards Specifically for Co-Primary PCS and 2 GHz Microwave Operations in its Forthcoming PCS Rulemaking Proceedings.

As a common carrier 2 GHz microwave licensee, TDS is prepared to cooperate fully with any co-primary PCS licensee to avoid harmful interference. We recognize that existing standards for interference protection under the Commission's rules implementing TIA Bulletin 10-E may need to be modified to reflect the unique characteristics of PCS and any other emerging technologies sharing frequencies in the 2 GHz common carrier band. The Commission should address such considerations in its forthcoming PCS Notice of Proposed Rulemaking.

4. Licensees of Communications Systems Authorized Prior To January 16, 1992 Should Be Permitted To Add Or Modify 2 GHz Microwave Facilities Used With Such Systems On A Co-Primary Basis.

We also support the Commission's proposal to extend co-primary status to new, additional or modified 2 GHz microwave facilities used with communication systems authorized prior to January 16, 1992. Conditional secondary status should not be applied where additional frequencies are being added to existing microwave systems, where additional links may be required to complete an existing communications network, where new facilities are operationally connected to authorized communications systems or where any of the other modifications listed in the Commission's

May 14, 1992 Public Notice are involved. This amount of flexibility to expand, to alter or to complete any communication network authorized or applied for prior to January 16, is essential to avoid disruption of planned or partially implemented network designs.

In particular, the Commission should confirm that 2 GHz microwave links applied for after January 16 as part of ongoing cellular system construction programs will qualify for co-primary status. For example, a number of subsidiaries of TDS are actively constructing cellular systems which were authorized by the Commission prior to January 16. Engineering planning, site acquisition, frequency coordination, FAA filings, construction budgets, equipment purchases and other steps have been taken or are being completed to implement these systems. The 2 GHz microwave links to provide intra-system connections between cell sites and between cell sites and MTSO sites are an integral part of this overall cellular system construction program. By granting co-primary status to these microwave facilities, the Commission will avoid unnecessary and potentially costly disruption to ongoing construction programs and will foster the early availability of valuable new cellular services.²

² The Commission should also adopt additional procedures to permit continued operations of 2 GHz fixed microwave operations applied for after January 16, 1992, particularly in rural areas, where less spectrum may be required for new emerging services. This could be accomplished by first granting applications for these new services on frequency blocks which do not conflict with (continued...)

We propose that the Commission permit applications for new or additional 2 GHz microwave links filed as part of ongoing system construction programs to be processed for grant on a co-primary basis provided that they are filed prior to the adoption of final rules allocating 2 GHz spectrum involved for a specific emerging technology service or prior to a cutoff date set by the Commission at the time such final rules are adopted. The right to make any of the major modifications to existing 2 GHz microwave facilities listed in the Commission's May 14 Public Notice without altering the co-primary status of those facilities should continue until the authorization for those facilities is voluntarily relinquished.

5. The Re-Accommodation of 2 GHz Microwave Licensees Who Voluntarily Relinquish Frequencies Should be Fully Compensated by New Emerging Technology Users.

We support the Commission's initiative to encourage the voluntary relinquishment of 2 GHz microwave frequency rights

²(...continued)
existing or proposed 2 GHz microwave operations. If there are no such blocks available, the Commission's policies should encourage negotiation between the licensees of new services and existing or proposed microwave users to permit the operation of these new licensees to be conducted whenever possible without disrupting co-channel use of frequencies by microwave users.

through negotiations between the existing and replacement users with co-primary rights to these frequencies. The emerging technology users of 2 GHz spectrum should bear the costs of shifting existing microwave users to new spectrum or to non-radio alternative media. The amount of payment to an existing 2 GHz microwave user should not exceed the direct and indirect costs of that user for substitute transmission capacity. We support the adoption of Commission policies which limit the amount of payments to preclude windfall profits which exceed the reasonable cost of relocation.³

6. The Commission's Proposal to Waive Eligibility Requirements to Permit Private Microwave Users to Relocate in Common Carrier Bands Above 3 GHz Should be Rejected.

We oppose the Commission's proposal to grant a "blanket" waiver of eligibility requirements to permit private microwave users to relocate in common carrier point-to-point microwave bands. The frequencies available for relocation include a large number of bands allocated under Part 94 of the Commission's Rules which are

³ We also support use of tax certificates to encourage the shift from 2 GHz microwave to new spectrum or non-radio transmission media.

suitable technically and under existing coordination procedures to accommodate the needs of existing 2 GHz private microwave users. The Commission's proposal to waive eligibility requirements needlessly complicates these proceedings and should be rejected.⁴


Conclusion:

The Commission should adopt its reallocation proposals subject to the safeguards for existing or planned 2 GHz microwave users outlined here. The early implementation of PCS using an initial allocation of 140 MHz of spectrum in the 1850-1990 MHz band will make possible important expanded service options for the public and keep the U.S. in the forefront of the international development of the family of new PCS services and technologies. The voluntary relinquishment of co-primary rights by 2 GHz microwave users over time, subject to full compensation by

⁴ In the event additional frequencies are necessary to accommodate the spectrum needs of private microwave users, the Commission should consider using government spectrum in the 1710-1850 MHz band as soon as it is available.

new PCS or other emerging technology users, is a fair, non-disruptive and reasonable compromise of the competing needs for access to 2 GHz spectrum.

Respectfully submitted,
TELEPHONE AND DATA SYSTEMS, INC.

By  /s/ George Y. Wheeler
George Y. Wheeler

Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 467-5700

Its Attorneys

June 8, 1992